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ABSTRACT

This paper--part of a collection of 54 papers from the 48th annual conference of the Education Law Association held in November 2002--addresses social forces that affect the school curriculum regarding legal rights of public-school students. It identifies areas of concern and recommends methods for ensuring that the legal rights of students are integrated into the school's curriculum. Three areas of concern, according to this paper, are as follows: (1) American society's return to an 18th-century model of punishment in dealing with misbehavior; (2) the blurring of the line between school supervision and police action, resulting in such actions as unwarranted drug tests and searches; and (3) zero-tolerance policies, which represent the epitome of the authoritarian structure, a punishment-centered bureaucracy. The paper makes the following recommendations: Implement a school curriculum that encourages participatory democracy and fosters a climate in which students and staff understand the need to respect the rights of others. Make the classroom more democratic so that students will internalize the values of their classrooms. Teach civil liberties through modeling by teachers. Install peer-mediation programs for students. Finally, encourage compassionate educational leadership that helps students become more humane, caring individuals. (Contains nine references.) (WFA)

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Education Law Association 48th Annual Conference.

Topic Session G-6

Narrative Outline
Integrating Legal Rights of Students into the School Curriculum

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Introduction

Educational practitioners, theorists, and researchers have used the term *curriculum* in various ways. While no definition has become universally accepted, there are similar definitions currently in use ranging from "a course of study" to "all the experiences that students have while at school," and, "The experiences, both planned and unplanned, that enhance (and sometimes impede) the education and growth of students."[1]

However, an even more comprehensive definition of curriculum is required in terms of the needs and trends that characterize our lives in the twenty-first century. That definition of curriculum is " . . . all of the experiences that individual learners have in a program of education whose purpose is to achieve broad goals and related specific objectives, which is planned in terms of a frameworks of theory and research or past and present professional practice."[2] The phrase *program of education* means that the curriculum is a planned program developed by teachers and other professionals. The planned objectives of a curriculum are developed in light of theories and research on social forces, human development, learning, and knowledge, and cognition.[3]

This article addresses social forces that impact the school curriculum regarding legal rights of public school students. It identifies areas of concern and recommends methods for ensuring that the legal rights of students are integrated into the school's curriculum.

Levels of Social Forces in the Curriculum

Three levels of social forces influence the curriculum: the national and international level, the local community level, and the culture of the school setting in which the curriculum is implemented. Each school has a distinctive culture – a set of guiding beliefs, assumptions, values, and traditions that distinguish it from other educational settings. Some schools may be characterized as communal places where there is a shared sense of purpose and a commitment to providing students with meaningful, carefully thought out curricular experiences. Others lack a unified sense of purpose or direction while others may be characterized by internal discord, conflict, and divisiveness.[4] The culture of the school setting is where the legal rights of students are inculcated into the curriculum.

Compared to most Western democracies, America is returning to an 18th-century model of punishment and retribution in dealing with misbehavior and delinquency. However, studies that have compared punishment with prevention in juvenile detention centers demonstrate that education, rehabilitation, and therapy are much more successful than punishment in decreasing

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[1] Parkay, F.W., and Stanford, B. *Becoming a Teacher* (4th ed.). Boston: Allyn and Bacon, 1998. p. 347.
[2] Parkay, F.W. and Hass, G. *Curriculum Planning: A Contemporary Approach* (7th ed.). Boston: Allyn and Bacon, 2000. pp. 2, 3.
[3] *Id.* at 3.
[4] *Id.* at 53.

the re-arrest rates. But many Americans reject reliable scientific data because they are subject to a pattern of thought referred to as the Singapore Syndrome.[5]

The Singapore Syndrome is a set of antidemocratic beliefs that emerged as a result of reactions in 1994 to the proposed public flogging of 18-year-old Michael Fay, an American student living in Singapore. In an 8 April 1991 *Newsweek* poll, thirty-eight percent of Americans approved of Fay's canning. Conservative politicians throughout America tried to reintroduce flogging into our penal codes soon after the Fay story broke. Florida representative, Berly Burke was quoted as saying, "Bruises, welts, and broken bones do not constitute child abuse." Supreme Court Justice Antonin Scalia reinforced Burke's thinking by claiming that caning is probably constitutional and an improvement over the more horrible things that were done in 1791 when cruel and unusual punishment were defined.[6]

Schools are increasingly driven by polices and politics of punishment. Many persons believe that safe and orderly schools require automatic punishments based on zero tolerance policies. The automatic use of punishment, as opposed to prevention of misbehavior and violence in schools, makes the schoolhouse toxic for too many students. Society should be concerned about educators who are inherently punitive and autocratic. Instead, society's belief in exaggerated and distorted accounts of school violence result in punitive policies that victimize students. Nationwide, statistics gathered by the Justice Policy Institute and the U.S. Department of Education show that crime of all sorts is down at public schools since 1990 – some studies say by as much as 30 percent. Less than 1 percent of all violent incidents involving adolescents occur on school grounds.[7]

The line between school supervision and police action becomes blurred with warrantless, school-wide urine screening and massive drug searches. The routine and unquestioning acceptance of these policies is undermining and distorting students' understanding and belief in constitutional. There is also the simple fact that such policies do not work.[8]

Society and the School Curriculum

The close relationship between the social environment and the development of an appropriate curriculum is evident if three developmental tasks that citizens in a democratic society must accomplish are considered. First, in our society, each person's identity is determined largely by his or her occupation. The work environment is the setting for most individual's day-to-day experience. Second, a democratic society requires citizens who are prepared to deal with

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[5] Hyman, I.A., and Snook, Pamela A. "Dangerous Schools and What You Can Do About Them." *Phi Delta Kappan* 81, no. 7 (March 2000): 489-501.
[6] *Id.*
[7] Tebo, Margaret Graham. "Zero Tolerance, Zero Sense." *The American Bar Association Journal* (April 2000): 41-113.
[8] Hyman, I.A., and Snook, Pamela A. "Dangerous Schools and What You Can Do About Them." *Phi Delta Kappan* 81, no. 7 (March 2000): 491.

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the current issues of government. Finally, each person faces the challenge of achieving self-fulfillment and self-development. Therefore, from the individual student's standpoint, an appropriately developed curriculum must enhance the student's ability to accomplish developmental tasks in three areas: vocation, citizenship, and self-fulfillment.[9] The deprivation of students' legal rights in the school curriculum greatly compromises their development in those three areas.

The culture of the educational setting within which the curriculum is implemented is the social forces that determine the quality of life at the school. Those social forces include the individual learner's social status, the teacher's role in the school, the teacher's role in relation to other professional staff, and the degree of harmony or discord that characterizes school-community relationships.[10] The fact that a student's well-being is connected to the student's ability to learn is reflected in the Interstate New Teacher Assessment and Support Consortium (INTASC) "Principles for Beginning Teachers." Principle Ten states, "[The] Teacher fosters relationships with school colleagues, parents, and agencies in the larger community to support students' learning and well-being."[11] The following areas of concern and recommendations for improvement are curriculum concerns in that they are part of " . . . all of the experiences that individual learners have in a program of education."[12]

Due Process

Due process is a guarantee that a student's constitutional rights will not be abridged without notice of an alleged violation of rules or law, which has as a consequence the loss of important rights, coupled with the opportunity to tell one's own side of the story. Simply put, due process is notice of school policies and consequences, and the opportunity to be heard by the student. All states have compulsory school attendance laws. Therefore, due process is required for any action by a school district that causes a student to miss any school.[13]

A due process hearing is similar to a court hearing, except the rules of evidence are relaxed. Therefore, hearsay evidence (out-of-court statements offered for their truth) may be presented, and everyone in attendance may offer facts and opinions. Everyone is entitled to a due process hearing when important rights are involved. A student does not have to be a citizen for the due process provisions of the Constitution to be set in motion.[14]

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[9] Parkay, F.W. and Hass, G. *Curriculum Planning: A Contemporary Approach* (7th ed.). Boston: Allyn and Bacon, 2000. p. 51.
[10] *Id.* at 53.
[11] Seyfarth, John T., *Human Resources Management for Effective Schools* (3rd ed.). Boston: Allyn and Bacon, 2002. p. 35.
[12] Parkay, F.W. and Hass, G. *Curriculum Planning: A Contemporary Approach* (7th ed.). Boston: Allyn and Bacon, 2000. p. 3.
[13] Prickett, Charles, "Due Process and Impartiality." *Principal Leadership* (December 2001): 47-49.
[14] *Id.* at 49.

Impartial Hearing Officer

School districts that use administrative personnel as hearing officers are engaging in a risky practice that could furnish legal grounds to attack a decision to suspend or expel a student. The fundamental fairness of the hearing may be challenged if conducted by a hearing officer who does not appear to be impartial and who may not have the training and experience to conduct a formal hearing. Public school administrators are not inherently unfair or unable to determine the facts and apply school rules. However, they are in daily contact with administrators, teachers, and staff members who present their observations and conclusions at the due process hearing, and it is their testimony on which the hearing officer bases a decision. Internal administrators have to work with those workers every day, and there are good reasons to question whether their decisions are influenced by their contacts with witnesses who are also coworkers. There is no mandatory rule concerning the use of outside hearing officers. However, the better practice is to have a person hearing the evidence who is not subject to influence by personal relationships with those giving testimony.[15]

Appeal Procedures

If the hearing officer is an administrator in the school district, a student should have the right to appeal the hearing officer's suspension decision before the student is removed from school. The student could appeal the decision to another administrator who is not involved in the matter (presenting testimony, conclusions, etc.). In the alternative, the student could appeal the hearing officer's decision to a committee of teachers and administrators. The appeal committee should be trained in the appeal procedures and have clear guidelines concerning the committee's authority as to issues that may be appealed and the final dispensation of the matter. Ultimately, the student should be provided an opportunity to appeal a long-term suspension or expulsion (over ten days) to the board of education.

No Tolerance Policies

There are no current statistics available on the number of public school students who are formally disciplined or prosecuted for wrongdoing. However, in a seminar sponsored by the American Bar Association Juvenile Justice Center, an informal discussion showed a sharp increase in the number of clients seeking counsel over perceived injustices in school discipline. Students whose misbehaviors in the past would have called for oral reprimands are now being labeled a threat to school safety. Those same students involved in "kids-will-be-kids" incidents are now facing punishments ranging from suspension to expulsion to referral to the juvenile court system for behaviors that even the schools agree do not actually compromise safety. The result

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[15] *Id.*

is a growing alienation between the administrators who implement the zero-tolerance policies and the students they are trying to protect.[16]

Even students who have rarely been in trouble before their run-in with zero-tolerance seem to be getting a message from the school that mistakes of youth will not be tolerated and second chances are rare. As Bernadine Dohrn, director of the Children and Family Justice Center at Northwester University School of Law stated, "The message that kids are getting is, 'Our main enemy is among us and it is our children.'"[17]

Zero-tolerance policies are the epitome of the authoritarian organizational model. An authoritarian structure emphasizes bureaucratic authority at the expense of professional consideration. Authority is based on position and hierarchy. Disciplined compliance to the rules, regulations, and directives is the basic principle of operation. Rules and procedures are impersonally applied. The superior always has the last say. Authoritarian structure has been described as a punishment-centered bureaucracy.[18]

Equal Treatment vs. Equitable Treatment

Students are expected to learn to make differentiations of degree on various types of matters in their schoolwork. Students are able to understand that there is a difference between being treated equally and being treated fairly. Middle school and high school students care most about fairness. When they see two students whose "offenses" are vastly different being treated exactly the same, that sense of fairness is obliterated and replaced with fear and alienation. The goal of the school curriculum should be to keep students in school, not look for more ways to get rid of them. However, helping students to learn from mistakes often takes a back seat to law-and-order concerns.[19]

Schools tend to hold to the misguided concept that treating everyone the same will protect the school from lawsuits. Generally, courts find that a decision on expulsion is a matter for the school board's discretion. The only requirement appears to be minimal due process, which the courts have found can be satisfied by merely holding a hearing at which the student and parents are given an opportunity to speak. Courts have been extremely reluctant to invade the territory of school authorities to make disciplinary decisions.[20]

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[16] Tebo, Margaret Graham. "Zero Tolerance, Zero Sense." *The American Bar Association Journal* (April 2000): 41.
[17] *Id.*
[18] Hoy, Wayne K., and Miskel, Cecil G. Educational Administration: Theory, Research, and Practice (5th ed.). New York: McGraw-Hill, Inc., 1996. pp. 60-61.
[19] Tebo, Margaret Graham. "Zero Tolerance, Zero Sense." *The American Bar Association Journal* (April 2000): 41.
[20] *Id.* at 42.

Recommendations

Democratic Schools

In the area of discipline and student rights, punitive and authoritarian impulses in a community can rule policy making and impose severe sanctions on individuals who do not conform to community standards. As a result, students' rights can be easily trampled.

A school curriculum that encourages participatory democracy is characterized by a climate in which students and staff members understand the need to respect on another's rights. Democratic schools establish a curriculum that provides students with a sense of shared responsibility with the school staff for assuring the safety for all. The curriculum encourages students to participate in democracy when they become adults in society. The tendency of adults toward apathy about government authorities can be averted if students have the real-life experiences of influencing school policies that adversely affect their lives.

One of the best indicators that a school is oriented toward democratic principles is the morale of the school staff. Morale will be high if the school board and administrators seek consensus by responding to the needs of teachers, students, and parents. Policymaking is characterized by committee efforts to define problems and consensus building to shape solutions.[21]

Democratic Classroom

In an authoritarian classroom, where discipline is based on external controls, removal of the teacher leads to a loss of control of the students. The model for control is punishment by an external factor – the teacher. When students become more confident of the teacher's absence, they become more unruly. Bullying, fighting, and threats to get the teacher and the principal tend to occur. By contrast, in democratic classrooms, students internalize the values of their classrooms. Cooperation among students in democratic classrooms is much higher resulting in better seatwork and work in groups.[22]

Understanding Civil Liberties

The school curriculum is the one place where liberty can be successfully instilled in the hearts and minds of all students. Therefore, students must be taught the importance of protecting and ensuring the constitutional rights of every American in order to keep their own rights out of danger. The best method for teaching civil liberties is modeling by the teacher in his or her relationships with students and professional peers.

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[21] Hyman, I.A., and Snook, Pamela A. "Dangerous Schools and What You Can Do About Them." *Phi Delta Kappan* 81, no. 7 (March 2000): 492.
[22] *Id.* at 496.

If students are not taught, within developmental limits, how to freely express their ideas, how will they ever truly learn to understand the nature and concept of free speech? At all grade levels, students should be taught to express their feelings and ideas in appropriate ways. They should be encouraged to question what teachers say. They should challenge information they are given – both alleged facts that do not seem correct and interpretations of events with which they do not agree.

Peer Mediation

Peer mediation is a program that teaches strategies to students that allow them to handle conflicts in a positive and constructive manner. With proper training and application of that training, students learn to use conflict as a positive force that can lessen the detrimental effects of conflict and increase social skills and personal image of self. By including peer mediation in the school curriculum, the benefits are shared by all. There are benefits for student conflict mediators, the student body-at-large, families, and society. The skills learned and benefits gained from peer mediation will follow students the rest of their lives.[23]

Compassionate Leadership

Education is not a business. Excellence in education does not necessarily mean being tough. Holding high standards, but at the same time providing compassionate support to help students and staff are the hallmarks of effective leadership. Being an educational leader is not about climbing ladders – it is about service. Service entails listening to others, caring for them, and quietly going about doing one's job.

We tend to see confrontations in terms of right and wrong, winners and losers. Students can become easily convinced of the battle lines teachers inevitably create with conflict and punishment. However, there is another option.

Punishing students is easy because teachers and administrators have clearly superior skills in discipline. However, the true purpose of classroom supervision is to change student behavior rather than the arbitrary enforcement of discipline. In his book, *The Art of War*, Sun Tzu wrote more than 2,000 years ago, "100 victories in 100 battles is not the most skillful. Subduing the other's military without battle is most skillful."[24]

Education should be about helping students become more humane, caring individuals, capable of dealing with the complex issues that the world presents. In holding that curriculum is " . . . all of the experiences that individual learners have in a program of education," we can model humane behavior for our students without sacrificing standards of learning or behavior.

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[23] Reggio, Michael H. "Peaceful Resolution for Oklahoma Students." The Oklahoma Bar Association (1994): p. 6.

[24] Heller, Daniel A. "The Power of Gentleness." *Educational Leadership*, Vol. 59, No. 8 (May 2002): pp. 76, 77.

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